

1  
2  
3  
4  
5 **UNITED STATES DISTRICT COURT**  
6 **DISTRICT OF NEVADA**

7 MARCUS SHARIF MCNEAL,

Case No.: 2:20-cv-00296-RFB-DJA

8 Petitioner

**ORDER**

9 v.

10 JERRY HOWELL, et al.,

11 Respondents  
12

13 Petitioner Marcus Sharif McNeal has submitted another petition for a writ of habeas  
14 corpus (ECF No. 1-1). He has submitted an incomplete application to proceed in forma  
15 pauperis; he has failed to include the authorized financial certificate or inmate account  
16 statements. Thus, this action has not been properly commenced. 28 U.S.C. § 1915(a)(2)  
17 and Local Rule LSR1-2.

18 Moreover, McNeal has already filed at least two habeas petitions that challenge  
19 the same judgment of conviction—C-288873-1—in this court. (See case nos. 2:16-cv-  
20 01618-JAD-GWF; 2:17-cv-2589-RFB-CWH).

21 28 U.S.C. § 2244(3)(A) provides: “[b]efore a second or successive application  
22 permitted by this section is filed in the district court, the applicant shall move in the  
23 appropriate court of appeals for an order authorizing the district court to consider the

1 application.” Where a petition has been dismissed with prejudice as untimely or because  
2 of procedural default, the dismissal constitutes a disposition on the merits and renders a  
3 subsequent petition second or successive for purposes of 28 U.S.C. § 2244. *McNabb v.*  
4 *Yates*, 576 F.3d 1028, 1029-1030 (9th Cir. 2009); *Henderson v. Lampert*, 396 F.3d 1049,  
5 1053 (9th Cir. 2005).

6 In fact, McNeal’s earlier-filed 2016 petition is currently pending before this court  
7 (2:16-cv-01618-JAD-GWF). This petition, therefore, is duplicative and/or a second or  
8 successive habeas corpus petition. *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th Cir.  
9 2005). Accordingly, this petition shall be dismissed as improperly commenced and  
10 second and successive.

11 Reasonable jurists would not find this conclusion to be debatable or wrong, and  
12 the court will not issue a certificate of appealability.

13 **IT IS THEREFORE ORDERED** that the Clerk shall **DETACH** and **FILE** the petition  
14 (ECF No. 1-1).

15 **IT IS FURTHER ORDERED** that the petition is **DISMISSED** as improperly  
16 commenced and a successive petition.

17 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.

18 **IT IS FURTHER ORDERED** that petitioner’s application to proceed in forma  
19 pauperis (ECF No. 1) is **DENIED** as moot.

20 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly  
21 and close this case.

22 DATED: 20 March 2020.

23   
RICHARD F. BOULWARE, II  
UNITED STATES DISTRICT JUDGE